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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.243 OF 2001

Anil Jagannath Malve)
Aged about 30 years)
permanently residing at Bhimwadi)
Dr.R.P.Road, Mulund (West))
Mumbai 400 080.).. APPELLANT

VERSUS

The State of Maharashtra)
(At the instance of Mulund Police)
Station in C.R.No.145/90)).. RESPONDENT

Mr.Sudhir Halli for the Appellant.

Smt.P.H. Kantharia, Additional Public Prosecutor,
for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. &
SMT.NISHITA MHATRE, J.

DATED: 28TH AUGUST 2006

ORAL JUDGMENT : (PER MHATRE, J.)

. This Appeal has been preferred against the judgment and order of the Additional Sessions Judge for Greater Bombay in Sessions Case No.372 of 1990. The accused has been convicted under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment.

2. The case of the prosecution in brief is that the accused and his brother permitted people to play carrom

in their game shop by charging them some money. On 9th March 1990, one Sanjay Jadhav and his friend Anil Pawar went to play carrom as usual in the game shop of the accused. While they were playing, the accused, who had consumed liquor, demanded money from Sanjay. Since Sanjay refused to accede to his demand, the accused refused to permit them to continue the game and started closing the shop. A quarrel ensued between Sanjay and the accused. The accused bit the right cheek of Sanjay who shouted for help. Sanjay's uncle, the deceased, separated Sanjay and the accused. Sanjay and his uncle returned home. Thereafter, around midnight, the accused came to Sanjay's house and started hurling abuses and threats at him. He also tried to kick open the front door of Sanjay's house. The deceased, who stayed in an adjacent house, came there and tried to pacify the accused. Sanjay and his mother opened the door and Sanjay tried to catch hold of the accused in order to take him to the police station as suggested by the deceased. The accused jerked himself free and gave a knife blow on the chest of the deceased. The accused fled from there and ran towards old Mulund taking his knife with him. Sanjay chased the accused for a distance in order to nab him. However, he was unsuccessful and, therefore, he returned home only to find the deceased lying in a pool of blood with bleeding injury on his chest. Sanjay and his brother Anil and

their mother removed the deceased to the hospital in an autorickshaw. On examining the victim, the Doctor declared him dead. The post mortem was conducted and the Doctor found that the death had occurred on account of the stab injury and haemorrhagic shock. The police arrived after PW1 lodged his complaint. The seizure panchanama was recorded as also a spot panchanama. The accused was arrested soon thereafter. The knife used as the weapon of assault was recovered at the instance of the accused.

3. On a consideration of the evidence and other material before him, the learned Sessions Judge has recorded a finding that the accused was guilty of the offence under Section 302. We have, therefore, reappreciated the evidence on record and find that we are unable to agree with the learned Sessions Judge.

4. The prosecution has examined ten witnesses to prove its case. Four of these are eye witnesses. PW1 Sanjay is the nephew of the deceased. He has narrated the entire course of events which led to the stabbing of the deceased. He has stated that the accused injured the deceased with a single blow of a knife. Similarly, PW2, who is the sister in law of the deceased, has also corroborated the deposition of her son Sanjay. She has also stated that the deceased sustained a single knife

blow. PW3 is another eye witness and the son of the deceased. He has corroborated the evidence of PW1 and PW2 and has stated that he and other members of the family removed the deceased to the hospital for treatment. PW5 is the wife of the deceased who has also witnessed the incident. Like the other eye witnesses, she has deposed that the deceased suffered a single blow with the knife. Therefore, the testimony of these witnesses taken as a whole indicates that there was an altercation during the earlier part of the evening between PW1 and the accused. PW1 had sustained an injury in this scuffle with the accused. The deceased had intervened to separate PW1 and the accused. The accused was enraged and he went to the house of PW1 at midnight or a little past midnight and tried to kick open the front door. The deceased who stayed in the neighbouring house, reached Sanjay's front door and tried pacifying the accused who was then hurling abuses at Sanjay and threatening him. PW1 and PW2 came out of their house and PW3 and PW4 also reached Sanjay's front door. The deceased had suggested that the accused should be handed over to the police for hurling abuses and creating a commotion. Thereupon the accused wielded a knife to stab the deceased on the left side of his chest.

5. The medical evidence corroborates the ocular

evidence. The post mortem report which has been proved through PW4 showed that the deceased died due to the stab wound.

6. The accused also sustained some injuries for which he was treated in Mulund General Hospital. PW8, the Medical Officer who treated the accused, has deposed to that effect. PW9 is the Doctor who treated PW1 for the injury sustained on his right cheek.

7. PW6 is the Police Inspector who registered the FIR. PW7 is the Police Sub-Inspector who drew the inquest panchanama and the spot panchanama in the presence of two panchas. PW10 is the Investigating Officer.

8. Considering the entire evidence on record, we are of the opinion that the conviction of the accused under Section 302 cannot be sustained. There is no doubt that the accused has committed an offence of culpable homicide which does not amount to murder. The learned Counsel for the Appellant has relied on the judgments of the Apex Court in *State of M.P.* vs. *Kalu Ram*, **(2004) 12 SCC 543**, *Shivappa Buddappa Kolkar* vs. *State of Karnataka*, **2005 SCC (Cri) 93** and *Ravi Kumar* vs. *State of Punjab*, **(2005) 9 SCC 315**. The Apex Court in each of these judgments has held that a single blow

inflicted on the deceased on the spur of the moment cannot constitute an offence under Section 302 but one under Section 304 Part II. In the case of *Ravi Kumar* (supra), the Supreme Court dealt with a case where a quarrel had taken place between the deceased and the accused on the previous day. They tried to settle the dispute the next day when the quarrel erupted again between the two. The accused gave two blows on the head of the deceased with a weapon resulting in the death of the deceased. Even in such circumstances also, the Apex Court was of the view that the conviction should be under Section 304 Part II instead of Section 302.

9. In the case before us, where the ocular evidence is supported by the medical evidence that there was a single blow inflicted on the deceased with a knife, we are of the opinion that the offence committed by the accused is of culpable homicide not amounting to murder. He is, therefore, liable to be punished under Section 304 Part II and not under Section 302.

10. Appeal partly allowed. The accused is thus convicted under Section 304 Part II of the Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of five years. If this period is over, the accused is liable to be released forthwith, if not otherwise required in any other case.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT.NISHITA MHATRE, J.)